Internal Revenue Service

Index Number: 104.02-00

Department of the Treasury

Washington, DC 20224

199918059

Person to Contact:

Telephone Number:

Refer Reply to:

CC:EBEO:6 PLR-120238-98

Date:

FEB 3 1999

City =

Board =

Plan =

Section X =

Dear

This responds to your request of September 30, 1998, regarding the proper federal income tax treatment of job-related disability benefits awarded to you by the Board pursuant to the Plan.

You state that you are a former police officer with the City who, in 1998, became totally and permanently unable to perform the duties of a police officer to which you were assigned prior to your incapacity. The Board, having reviewed the records, medical and otherwise, and the independent medical evaluation of a qualified physician, determined that you incurred a disability in the line of duty that left you totally and permanently unable to perform the duties of a police officer. Moreover, the Board determined that you were entitled to an in-line-of-duty disability pension pursuant to Section X of the Plan.

Section X of the Plan provides that any member who shall become totally and permanently disabled to the extent that he or she is unable to render useful and efficient service as a police officer, which disability is directly caused by the performance of his or her duty as a police officer, shall, upon establishing to the satisfaction of the Board that he or she is so disabled, be entitled to the same monthly pension as if he or she had retired under the normal retirement provision of the Plan with at least a three percent multiplier; provided, that if he or she shall have served less than twenty-five years of credited service, his or her monthly pension shall be based upon an assumed twenty-five years of credited service.

The normal retirement provision of the Plan provides that any police officer may retire after twenty-five years of credited service and after having attained the age of fifty years and shall receive a monthly pension equal to three percent of his or her average compensation multiplied by his or her number of years of credited service; however, in no event shall the monthly pension exceed the average compensation of the member.

You request a ruling that the disability retirement payments made under Section X of the Plan are made under a statute in the nature of a workmen's compensation act and are, therefore, excludable from your gross income.

Section 61(a) of the Internal Revenue Code (Code) provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

Section 104(a)(1) of the Code provides that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. Section 104(a)(1) does not apply to a retirement pension or annuity to the extent it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a non-occupational injury or sickness nor to amounts received as compensation for an occupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts.

In Rev. Rul. 85-104, 1985-2 C.B. 52, the Service considered a statute under which the participants who were disabled due to work related injury or sickness receive the greater of a fixed percentage of base salary or an amount computed on the basis of years of service. The Service concluded that an amount up to the percentage of base salary specified by the statute would be excludable from the participants' gross incomes under section 104(a)(1) of the Code and any excess, because it would be computed on the basis of length of service, would not be excludable under section 104(a)(1).

Section X of the Plan limits retirement disability benefits to members who become totally and permanently disabled as a result of on-the-job injury and is a statute in the nature of a workmen's compensation act.

Therefore, disability retirement benefits paid to you under Section X of the Plan, to the extent they do not exceed three percent of your average compensation multiplied by twenty-five years of credited service, are excludable from your gross income under section 104(a)(1) of the Code. Disability benefits paid under Section X of the Plan which exceed three percent of your average compensation multiplied by twenty-five years of credited service, constitute retirement benefits that are determined by reference to length of service and are not excludable from your gross income under section 104(a)(1) of the Code.

Except as specifically ruled on above, no opinion is expressed or implied with respect to the application of any provision of the Code or the regulations to any section of the Plan other than Section X.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Harry Beker
Chief, Branch 6
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosures:
Copy of this letter
Copy for section 6110 purposes.